IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1158 OF 2005

Mualana Khalilur Rehman Noori ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

CRIMINAL WRIT PETITION NO.933 OF 2005

Ali Murtuza ...Petitoner
Vs.
The State of Maharashtra & Ors. ...Respondents

CRIMINAL WRIT PETITION NO.1472 OF 2005

Niyaz Ahmed @ Niyazmulla Noor Mohammed ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

CRIMINAL WRIT PETITION NO.1473 OF 2005

Mizan Khan Saifullah Khan ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri M. Amin H. Solkar for the Petitioner in all Petitions.
Shri K.V. Saste, A.P.P. for the State in all Petitions.

CORAM : A. S. OKA, J.
DATE : OCTOBER 20, 2005.

P.C.:

1. Office report shows that these Petitions pertain to the jurisdiction of the Single Judge.

2. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing immediately.

3. The challenge in these Petitions is to the show cause notices issued by the Respondent No.1 under the provisions of Section 110(g) of the Code of Criminal Procedure, 1973. It is not in dispute that the show cause notices which are subject matter of these Petitions have been issued on the same day containing similar allegations on the basis of same offence registered, namely, C.R.No.482 of 2004 at Oshiwara Police Station under section 353, 342, 143, 149 of the Indian Penal Code. The learned Advocate for the Petitioners submitted that the show cause notice is based only on one offence registered and therefore, the Petitioner cannot be treated as habitual offender. He relied upon the two decisions of this Court a reference to which is made in the later part of this Judgment. The learned A.P.P. opposed the Petitions by pointing out that on the basis of past record of the Petitioner, there is serious apprehension of breach of peace in the area.

4. It is pertinent to note that the show cause notice is issued calling upon the Petitioner to show cause as to why action should not be taken by invoking clause (g) of Section 110 of the said Code. Section 110 reads thus:

110.Security for good behaviour from habitual offenders.- When an (Executive Magistrate) receives information that there is within his local jurisdiction a person who-

(a) ......

(b) ......

(c) ......

(d) ......

(e) ......

(f) ......

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community.

Section 111 of the Code of Criminal Procedure, 1973 reads thus:

111. Order to me made.- When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information

> received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

The requirement of section 111 of the said Code is that before show cause notice is issued, an order is required to be made in writing setting forth the substance of the information received. In the show cause notice there is no reference to any such order being made by the Respondent No.2. Section 114 of the said Code requires that a copy of the said order shall be served. Passing of order under 111 of the said Code appears to be a condition preceedent for intiating action under section 110. Existence of any such order is not shown in these Petitions. Hence, on this ground, above the show cause notices are not valid.

5. On plain reading of the show cause notice, it is apparent that there is no specific allegation that information has been received that the Petitioners are so desperate and dangerous as to render their being at large without security hazard to the community. In fact, the allegations in the show cause notice are of general nature, not attracting clause (g) of Section

110 of the said Code.

6. Reliance is placed on a decision of the learned Single Judge of this Court reported in 1996(2) Maharashtra Law Journal, Page 662(Lalookhan Haideralikhan Vs. M.M. Kamble, Special Executive Magistrate, Byculla Division, Bombay). In my view, the said decision will not have the application as the court has considered the scope of clauses (a) and (b) of Section 110 of the said Code. Another decision which is pressed into service is of Division Bench of this Court reported in 1995(1) Crimes, Page 571 (Santosh Vishwanath Shinde Vs. J.R. Sangam Asst. Commissioner Police & Anr.). In this decision while dealing with the provisions of Section 110 and Section 111 of the said Code has observed thus:

> ". The notice in the instant case mentions only one solitary incident. Except the solitary incident no data is made available justifying the resort to the provisions of Section 110 of the Criminal Procedure Code. No antecedents are pointed out as far as the detenus are concerned. Hence, resort to the provisions of Section 110 and issuance of

the impugned notice upon the detenus under Section 111 is not justified in the facts and circumstances of the case. In the present case, apart from the incident quoted in the notice, no material is pointed out in the order to draw an inference that the detenus are by habit robbers, house-breakers, thieves, or forgers, or they habitually commit, or attempt to commit, or abet the commission of offences involving the breach of peace. We have not the slightest doubt that expressions like "you are habituated to commit such offences" cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections prevade of freedom, if incautiously proved by indolent judicial

> processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous, to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available (Gopalanachari V. State of Kerala "A.I.R.1981 S.C. 674)"

7. In my view, the observations which are made by the Division Bench are also relevant in the context of the controversy in this Petition. It is thus obvious that on plain reading of the show cause notices which are based only on one offence which is registered, the same are illegal. Hence, the Petitions must succeed.

CRIMINAL WRIT PETITION NO.1158 OF 2005

i) Rule is made absolute in terms of prayer clause (a).

ii) It is made clear that this order will not prevent the authorities from taking action against the Petitioner in accordance with law.

CRIMINAL WRIT PETITION NO.933 OF 2005

i) Rule is made absolute in terms of prayer clause (a).

ii) It is made clear that this order will not prevent the authorities from taking action against the Petitioner in accordance with law.

CRIMINAL WRIT PETITION NO.1472 OF 2005

i) Rule is made absolute in terms of prayer clause (a).

ii) It is made clear that this order will not prevent the authorities from taking action against the Petitioner in accordance with law.

CRIMINAL WRIT PETITION NO.1473 OF 2005

i) Rule is made absolute in terms of prayer clause (a).

ii) It is made clear that this order will not prevent the authorities from taking action against the Petitioner in accordance with law.

JUDGE